



Meris Sillaots

*Magister iuris,
Lecturer of Criminal Procedure,
University of Tartu*

Admission and Confession of Guilt in Settlement Proceedings under Estonian Criminal Procedure

The new Code of Criminal Procedure^{*1} (CCP), which provides for settlement proceedings^{*2} as an alternative form of simplified proceedings^{*3} to judicial proceedings in accordance with the general procedure, entered into force in Estonia on 1 July 2004.

This article discusses some of the issues relating to settlement proceedings. The focus is on issues of admission and confession of guilt in settlement proceedings.

1. Application conditions and course of settlement proceedings under the new CCP

According to the provisions of CCP § 239 (1), a court may adjudicate a criminal matter by way of settlement proceedings at the request of the accused or the Prosecutor's Office. CCP § 239 (2) 1) provides that settlement proceedings shall not be applied in the case of criminal offences in the first degree, for which the Penal

¹ Kriminaalmenetluse seadustik (Code of Criminal Procedure). – RT I 2003, 27, 166; 2004, 46, 329 (in Estonian). An English translation is available at: <http://www.legaltext.ee/et/andmebaas/ava.asp?m=022> (28.05.2004).

² It should be noted that settlement proceedings (under the name of simplified proceedings) have been available as part of the Estonian criminal justice procedure since 1996 and the scope of application of this form of proceedings has increased so much that in 2002, more than half of judgments were already being made through settlement between the prosecutor and the accused. See the summary report on the activities of the Prosecutor's Office's for 2002. Available at: <http://www.just.ee/files/statistika/prokuratuur/proxstats2002.pdf> (in Estonian). Simplified proceedings already accounted for 59.8% in 2003. See the summary report on the activities of the Prosecutor's Office's for 2003. Available at: <http://www.just.ee/prokuratuur/2003koondaruanne.pdf> (in Estonian).

³ The CCP provides for two forms of simplified proceedings besides settlement proceedings. These are: alternative proceedings and summary proceedings.

Code prescribes at least four years' imprisonment or life imprisonment as the minimum and maximum punishment, respectively.

Settlement proceedings may be initiated by the Prosecutor's Office (CCP § 223 (4), § 240) or by the suspect or the accused (CCP § 242 (1)). Before the judicial proceedings commence as part of settlement proceedings, the Prosecutor's Office explains to the suspect or the accused his or her rights in the settlement proceedings and the consequences of opting for settlement proceedings (CCP § 240 (1)), and if the suspect or the accused and his or her counsel consent to the settlement proceedings, the Prosecutor's Office prepares an appropriate report on this consent (CCP § 240 (4), § 241). The Prosecutor's Office also explains to the victim or the civil defendant the rights of the victim or civil defendant in settlement proceedings and the consequences of the application of settlement proceedings (CCP § 240 (2), § 241), and if the victim or civil defendant consents, the Prosecutor's Office draws up a report on the consent (CCP § 240 (3), § 243).

After drawing up consent reports, the Prosecutor's Office commences negotiations with the suspect or the accused and his or her counsel in order to conclude a settlement (CCP § 244 (1)). The objects of the settlement negotiations are the legal assessment of the criminal offence, the nature and extent of the damage caused by the criminal offence, and the type and the category or term of the punishment (CCP § 244 (2)). As a result of the negotiations, a settlement complying with the requirements of the law is reached (CCP § 245). Judicial proceedings are then conducted in connection with the settlement proceedings. The prosecutor, the accused, and his or her counsel are summoned for a court session (CCP § 246). The main substance of the hearing is the ascertainment of whether the accused understands what the settlement entails and whether arriving at the settlement was the actual intention of the accused (CCP § 247 (2)). In the judgement of conviction, the court proceeds exactly from the settlement (CCP § 249). If the court does not agree to the settlement, the court returns the file with the ruling to the Prosecutor's Office (CCP § 248 (1) (1) and 2)).

2. Settlement proceedings as a further step in providing simplified proceedings in Estonian criminal procedure

The settlement proceedings provided for in the new CCP are one step further, in the footsteps of the simplified proceedings⁴ set out in the 1961 Code of Criminal Procedure (1961 CCP). Compared to the simplified proceedings provided for in the 1961 CCP, settlement proceedings under the CCP are probably conducted somewhat more quickly. Settlement proceedings under the new CCP no longer require prosecution; the prosecutor need not prepare a separate statement of charges, as the relevant information is contained in the settlement. One of the major essential changes is that in contrast to simplified proceedings, application of the new settlement proceedings does not require a confession of guilt by the accused. It should be stated by way of comparison that according to the provisions of § 364 (1) of the 1961 CCP, the evidence — *i.e.*, the testimony of the accused — was a prerequisite for the use of simplified proceedings. Another condition was that the testimony had to contain a confession by the accused to all the charges brought against him or her. Thus, in simplified proceedings, the confession has not only the usual meaning of evidence but also a procedural meaning, implying that simplified proceedings cannot be applied unless there is a confession. The 1961 CCP does not actually preclude the lack of confession preceding the negotiations of simplified proceedings; rather, confession is a result of (informal) negotiations to meet the prerequisite for applying simplified proceedings and commencing formal negotiations.

The fact that confession of guilt is not a precondition for applying settlement procedures under the new CCP implies a positive development toward broadening the possibilities for application of settlement proceedings. However, it should be critically noted that the regulations pertaining to settlement proceedings do not govern the issues surrounding confession of guilt. It is probably incorrect to presume, though, that confession has no particular meaning in settlement proceedings at all anymore.

⁴ For more about simplified proceedings, see E. Kergandberg. Expedience of Arrangement E. German and Estonian Criminal Care. — *Juridica International* 1997 (1), pp. 76–89.

3. Admission and confession of guilt in Estonian settlement proceedings under the CCP

As it has been argued in the professional literature that the settlement proceedings provided for in the Estonian CCP are a Continental modification of the plea bargaining established in the Anglo-American legal system⁵, it should be noted by way of comparison that admission of guilt has no such meaning in Estonian settlement proceedings under the criminal procedure as the guilty plea does in, *e.g.*, US settlement proceedings.⁶ It should be stressed that the guilty plea is not part of the Estonian criminal procedure.

A comparison of the provisions of the 1961 CCP concerning simplified proceedings and the new CCP addressing settlement proceedings shows that while at the court hearing involved in simplified proceedings under the 1961 CCP a judge has to ask whether the accused confesses to the charges (§ 383 (2) of the 1961 CCP), the judge does not have to ask such a question of the accused in the court hearing for settlement proceedings under the CCP. According to the provisions of the CCP, it is possible to apply settlement proceedings and also make a judgement of conviction without the accused making a confession to the charges in the form of testimony and without the accused admitting his or her guilt in a manner similar to the guilty plea. According to CCP § 244 (2) and § 245 (1), it is sufficient in settlement proceedings if the Prosecutor's Office and the suspect or the accused and his or her counsel reach an agreement on the legal assessment of the criminal offence, the nature and extent of the damage caused by the criminal offence, and the type and the category or term of the punishment. For making a judgement of conviction in settlement proceedings, it is also important that the court ascertain that the settlement was the actual intention of the accused (CCP § 247 (2)) and that the court has no doubts about the issues settled by the court judgement (CCP § 248 (1) 2)).

The procedural document that contains the agreement on the legal assessment of the criminal offence and other issues subject to the settlement is the settlement under the criminal procedure (CCP § 245). According to CCP § 245 (1) 5), the settlement sets out the facts relating to the criminal offence, amongst other things. It may thus be said that if the accused signs the settlement, the accused essentially states that he or she does not contest the charges contained in the settlement (more specifically, the facts relating to the criminal offence, the nature and extent of the damage caused by the offence, and the legal assessment of the offence). The settlement thus contains a substantive admission of guilt. However, non-contestation of the charges (admission of guilt) in itself should not be regarded as substantive confession of guilt. To be more exact, such admission of guilt should not be regarded as evidence in the form of a piece of testimony. Admission of guilt by the accused, in the form of statements in the settlement, is not evidence concerning the facts relating to the offence but rather part of the dispensational procedural act of conduct. The other part of this dispensational procedural act is the consent of the other party, the prosecutor, to the content of the settlement. In other words, the admission of guilt by the accused as expressed in the settlement constitutes procedural conduct as a means of influencing the course of the proceedings. By signing the settlement, the accused and his or her counsel and the prosecutor mainly state that they request the continuance of the criminal proceedings by way of settlement proceedings under the conditions set out in the settlement.

As confession of guilt in the form of testimony is not required as a precondition for the application of settlement proceedings or a particular resolution of the relevant negotiations, the accused should basically have the opportunity of not contesting the charges yet signing the settlement without making a confession of guilt that could be regarded as evidence.

In the case of settlement proceedings, substantive confession of guilt as evidence and formal admission of guilt as a procedural statement should be distinguished.

In view of this distinction, there are three main situations in which settlement proceedings are applied.

In the first case, the suspect or the accused essentially admits guilt when giving testimony and admits his or her guilt in the form of a procedural statement expressed in the settlement.

In the second case, the suspect or the accused essentially states no opinion about the charges (does not give testimony concerning the charges) and admits guilt in the form of a procedural statement expressed in the settlement.

⁵ See E. Kergandberg, P. Pikamäe. Eesti uue kriminaalmenetluse seadustiku eelnõu lähtekohad (Starting points of the new Estonian draft Code of Criminal Procedure). – *Juridica* 2000/9, p. 561 (in Estonian).

⁶ For more about the guilty plea in American criminal proceedings, see, *e.g.*, J. Bickel. *Das förmliche Geständnis im US-amerikanischen Strafprozeß als Beispiel der Verfahrenserledigung*. Berlin: Duncker und Humblot 2001, p. 53; M. Dohr. *Die Berücksichtigung freiwillig geleisteter Wiedergutmachung des Täters bei der Durchführung des Strafverfahrens durch den amerikanischen Staatsanwalt unter besonderer Berücksichtigung des Rechts des Bundes, Kaliforniens und Michigans*. Inaugural-Dissertation. Köln 1997, p. 157; T. Weigend. *Absprachen in ausländischen Strafverfahren: eine rechtsvergleichende Untersuchung zu konsensualen Elementen im Strafprozess*. Freiburg: Max-Planck-Institut 1990, p. 35.

In the third case, the suspect or the accused essentially denies his or her guilt when giving testimony, while admitting to guilt in the form of a procedural statement expressed in the settlement.

Naturally, there are combinations of these scenarios, where the suspect or the accused admits guilt in the form of a procedural statement expressed in the settlement but admits to some of the charges or aspects thereof while denying another aspect of the charges or other charges, and/or essentially states no opinion about the charges when giving testimony.

Perhaps the first of the above three cases raises the fewest questions, especially if the confession and admission of guilt, which are regarded as evidence, are essentially similar. This means that the circumstances stated in the settlement signed by the suspect or the accused are also addressed in the confession he or she has signed. Even explication of a certain difference between confession and admission of guilt does not prevent the application of settlement proceedings. Confession of guilt is simply a piece of evidence in the file, and the result depends on the evaluation of the entire body of evidence. Acceptance of the settlement by the court depends on whether the result of the evaluation causes doubts to form in the mind of the court about the circumstances and legal assessment of the criminal offence, and the nature and extent of the damage caused by the offence as described in the settlement.

The second case should not raise any problems either. In this case, the suspect or the accused essentially states no opinion about the charges (does not give testimony about the issue of the charges) and formally admits guilt in the form of a procedural statement made in the settlement. Namely, the suspect or the accused has the right to refuse to give testimony (CCP § 34 (1) 1) and § 35 (2)). It should be once again mentioned that confession of guilt in the form of testimony is not required as a precondition for the application of settlement proceedings or as a result of the negotiations of settlement proceedings. Hence, the refusal of the suspect or the accused to give testimony does not prevent the application of settlement proceedings. It is sufficient if the suspect or the accused admits guilt by placing his or her signature on the settlement and if, on the basis of the evidence contained in the file, the court has no doubts about the circumstances or legal assessment of the criminal offence or about the nature or extent of the damage caused by the offence.

If we proceed from the understanding that it is sufficient in settlement proceedings if the suspect or the accused admits guilt by his or her signature on the settlement and if, on the basis of the evidence contained in the file, the court has no doubts about the circumstances or legal assessment of the criminal offence or about the nature or extent of the damage caused by the offence, the court should basically be able to accept the settlement even in the third of the cases listed above. This is the case when the suspect or the accused has essentially denied his or her guilt when giving testimony but admits guilt in the form of a procedural statement made as part of the settlement. Also, in such a case, the court should not be obliged to ascertain whether the accused actually admits his or her guilt or not. If the accused has consented to the undertaking of settlement proceedings and a settlement has been reached, the accused has essentially made a statement waiving his or her right to dispute the charges stated in the settlement, does not wish to contest these charges, and waives the right to the judicial procedure of examination of evidence. If the accused consents to the settlement, this also implies acknowledgement of and giving consent for the court proceeding from the evidence contained in the criminal file in making the decision. Thus, if the criminal file contains the interrogation record of the accused, containing testimony denying the charges, the court may take such testimony of the accused into account when assessing the evidence contained in the criminal file.

In connection with the denial of guilt, problems may seem to arise in the situation where the accused has reached an agreement in the course of settlement proceedings and confirms his or her understanding of and consent to the settlement in the court hearing for the settlement proceedings but while giving explanations about the circumstances of concluding the settlement states that he or she is actually not guilty. In a sense, this resembles the American Alford plea⁷, where the accused admits guilt in order to conclude the proceedings but at the same time states that he or she is not guilty.

The question is: how should the court act in such a situation? Let us first ask whether the court could, in such an event, accept the settlement and make a judgement for conviction in the settlement proceedings despite the accused's denial of guilt. An affirmative answer to this question is supported by the fact that according to the provisions of the CCP, confession of guilt is not a prerequisite for applying settlement proceedings or making a judgement of conviction as part of the settlement proceedings. According to the provisions of CCP § 247, at the court hearing for settlement proceedings, the judge has to ascertain whether the accused has understood the settlement and consents to it and whether conclusion of the settlement was the actual intention of the accused. The CCP does not oblige the judge to ascertain whether the accused actually admits his

⁷ North Carolina v. Alford, 400 U.S. 25 (1970). For more about the decision of the US Supreme Court in the case of *North Carolina v. Alford*, see K. F. Schumann. Der Handel mit Gerechtigkeit: Funktionsprobleme der Strafjustiz und ihre Lösungen – am Beispiel des amerikanischen plea bargaining. Frankfurt am Main: Suhrkamp 1977, p. 169; T. Weigend. Absprachen in ausländischen Strafverfahren: eine rechtsvergleichende Untersuchung zu konsensualen Elementen im Strafprozess. Max-Planck-Institut für Ausländisches und Internationales Strafrecht. Freiburg 1990, p. 70; J. Bickel. Das förmliche Geständnis im US-amerikanischen Strafprozeß als Beispiel der Verfahrenserledigung. Berlin: Duncker und Humblot 2001, p. 170.

or her guilt. However, one should not disregard the requirement arising from CCP § 248 according to which the court may make a decision on the conviction of the accused and on imposition of the punishment of the accused agreed upon in the settlement if the court has no doubts regarding the circumstances of the subject of proof (the criminal offence). In this connection, one should consider the possibility that the accused, when giving explanations about the circumstances surrounding conclusion of the settlement, may say something about the circumstances of the criminal offence or even deny or admit his or her guilt. The next question is whether the statements of the accused about the facts relating to the criminal offence that are given in the course of explaining the circumstances of the settlement could serve as a source for doubt on the part of the court about the circumstances of the subject of proof. The answer to this question depends somewhat on how the replies of the accused to the judge's questions at the court hearing for the settlement proceedings are regarded and how the explanations of the accused are regarded.

At first glance, it may seem that the reply of the accused to the judge's question of whether the accused has understood the settlement could be regarded as an explanation by the accused, because it is a statement of the accused's own opinion about his or her understanding of the settlement. But as the law in principle provides that a court hearing in settlement proceedings should ascertain whether the accused has understood the settlement and whether the settlement was the actual intention of the accused, the replies of the accused to the relevant questions of the judge must have evidential meaning. The court, while ascertaining whether the accused has understood the settlement, should consider both the accused's own opinion about his or her understanding concerning the settlement and the explanations of the accused about the circumstances of concluding the settlement. The explanations of the accused concerning the circumstances should also be regarded as evidence. It is also important to keep in mind that, unlike testimony, the explanations of the accused are elicited not with a view to the ascertainment of the circumstances of the subject of proof (the criminal offence) (CCP § 62) but rather only for the ascertainment of the circumstances surrounding the criminal procedure. Explanations should help to determine whether the accused has understood the settlement and whether the settlement expresses the actual intention of the accused. According to CCP § 63 (2), evidence not listed in CCP § 63 (1) may be used as evidence concerning the circumstances of a criminal proceeding. The explanations of the accused as given in the settlement proceedings may also be considered to be such unlisted evidence. As these explanations cannot be regarded as testimony about the circumstances of the subject of proof (the criminal offence), it should be possible to disregard the statements of the accused about the facts relating to the offence when giving explanations upon deciding whether the circumstances of the subject of proof (criminal offence) have been adequately shown.

4. Regarding a confession of guilt as testimony in settlement proceedings

According to the provisions of the CCP, the acceptance of guilt by the suspect or the accused by virtue of the settlement is sufficient for the application of settlement proceedings. Thus, settlement proceedings may be applied without a confession of guilt made in the form of testimony. However, one probably cannot in practice preclude a confession of guilt regarded as testimony still playing an important role in the application of settlement proceedings in certain cases, especially where a confession would be necessary on account of a gap preventing the application of settlement proceedings in a situation involving proof. If we assess the regulation of settlement proceedings under the CCP from the viewpoint of procedural economics, we may say that this regulation in its present form does not offer flexible enough opportunities for the suspect or the accused and his or her counsel, or for the Prosecutor's Office to gain the potential advantages of settlement proceedings. The regulation of settlement proceedings does not cover issues of confession of guilt made by way of testimony.

In order to render the possibilities for application of settlement proceedings more flexible and thus speed up criminal proceedings and save resources⁸, the law could provide that a suspect may confess his or her guilt by way of testimony in settlement proceedings. A relevant provision of the law would enable the suspect to give testimony (or, more precisely, confess his or her guilt) within the framework of the settlement proceedings. The possibility of confession would imply that the accused could confess his or her guilt with respect to all or only some of the charges.

It should be stressed that if the law provided for an opportunity to confess guilt in settlement proceedings, it would indeed be merely an opportunity. Settlement proceedings could still be applied without a confession

⁸ One should not disregard the information contained in the summary reports on the activities of the Prosecutor's Office for 2002 and 2003. These summary reports admit that the expanding use of simplified proceedings has not improved the throughput of the system as a whole. The alleged reason is that while settlement proceedings reduce the burden of the courts, they do not decrease that of the Prosecutor's Office and investigative bodies. See the summary reports on the activities of the Prosecutor's Office for 2002 and 2003 (Note 2).

of guilt regarded as evidence. In any case, the confession of guilt in settlement proceedings should be voluntary for the suspect or the accused. The accused should not be forced to give testimony against him- or herself. Also, according to section 22 of the Constitution of the Republic of Estonia, no one shall be compelled to testify against him- or herself. One should also proceed from the premise that according to CCP § 34 (1) 1) and § 35 (2), a suspect or the accused has the right to give or refuse to give testimony.

The need for setting out the possibility of making a confession of guilt in settlement proceedings in the law can be mainly justified by the fact that in such an event, the accused could request the application of settlement proceedings and the Prosecutor's Office could in certain cases consent to the application of settlement proceedings even if the pre-trial procedure could not, as a rule, be declared concluded in light of the status of the evidence. In other words, settlement proceedings could be commenced in such a case also if there is not sufficient evidence for the application of settlement proceedings but the gap in the evidence could probably be bridged by a confession of guilt by the accused. Such regulation pertains to situations where the accused would not agree to confess his or her guilt in criminal proceedings conducted under the general procedure but would agree to confess his or her guilt in settlement proceedings on condition that the confession be used as evidence only in the settlement proceedings. Naturally, settlement proceedings in such cases could continue after the confession only if the Prosecutor's Office were convinced that the circumstances of the subject of proof were clear enough and the accused could be convicted on the basis of the evidence collected.

The possibility of making a confession of guilt as part of settlement proceedings would probably somewhat alleviate the burden of investigative bodies and the Prosecutor's Office, and speed up criminal proceedings. As a result of the opportunity to confess guilt, a more lenient punishment would probably be imposed on the accused, as the confession could be regarded as active assistance in the detection of the offence and hence a mitigating circumstance (§ 57 (1) 3) of the Penal Code⁹).

The law should also prescribe at what stage of the proceedings the confession of guilt could be made in settlement proceedings. One of the options is to prescribe by law that confession of guilt may be made after the Prosecutor's Office has drawn up the reports on consent to the application of settlement proceedings and the reports have been signed. Making a confession at this stage of the settlement proceedings would be particularly suitable because the formal preparatory acts, such as the parties' introduction to their rights and the drawing up of a report concerning consent to the settlement proceedings, have been performed by that time.

It would probably be useful also to prescribe the last stage at which a confession could be made in settlement proceedings. This stage of the proceedings should be determined on the basis of the principle that confession of guilt should be made in settlement proceedings before agreement on the legal assessment of the criminal offence and on the nature and extent of the damage caused by the offence, and the type and the category or term of the punishment. Confession of guilt may reveal circumstances on which the settlement depends. The requirement that guilt be confessed before agreement on the legal assessment of the criminal offence and on the nature and extent of the damage caused by the offence, and the type and the category or term of the punishment, does not mean that guilt could not be confessed after commencement of the negotiations involved in the settlement proceedings. It is only important that very specific and binding agreements on the above issues not be made before the confession of guilt. Thus, the Prosecutor's Office should not make binding promises about the type and the category or term of the punishment before the accused has confessed his or her guilt. The reasoning behind this is based on the fact that the Prosecutor's Office should not make binding promises about the punishment requested before all the material circumstances are clear. As confession of guilt entails certain risks for the suspect¹⁰, the accused may be interested in the type and the category or term of the prospective punishment, however hypothetical, before he or she admits guilt. Therefore, in the settlement proceedings, the Prosecutor's Office should be allowed to set a maximum punishment to be applied in the event of confession, and it should not seek to impose a more severe punishment in the settlement proceedings. Also, the Prosecutor's Office should be obliged to explain to the suspect or the accused that the maximum punishment stated by the Prosecutor's Office before a confession is only hypothetical in a sense. The Prosecutor's Office should explain that the type and the category or term of the requested punishment cannot be finally determined at this stage of the proceedings. In other words, it is important to inform the suspect or the accused of the fact that the initial estimation of the Prosecutor's Office can still change and may even be exceeded if necessary. Such an explanation is necessary because situations may occur where the Prosecutor's Office may have to exceed the stated maximum punishment after the confession. This may be the case where new important facts (*i.e.*, facts not known to the Prosecutor's Office up to the point of the confession) to the disadvantage of the accused are revealed as a result of the confession.

⁹ Karistusseadustik (Penal Code). – RT I 2001, 61, 364; 2004, 7, 40 (in Estonian). An English translation is available at: <http://www.legaltext.ee/et/andmebaas/ava.asp?m=022> (28.05.2004).

¹⁰ When giving testimony, the suspect may reveal information that restricts his or her defence in criminal proceedings under the general procedure.

Neither should the Prosecutor's Office make binding promises about the legal assessment of the criminal offence or the type or extent of damage caused by the criminal offence before the accused has confessed his or her guilt.

Confession of guilt should thus take place immediately after the Prosecutor's Office has prepared the reports on consent to the application of settlement proceedings and these reports have been signed, or after the Prosecutor's Office has commenced negotiations for settlement proceedings. But it is important that the suspect confess his or her guilt in the form of testimony before the settlement negotiations end or, more specifically, before the settlement is concluded. When negotiations over the settlement proceedings have been commenced after the preparation and signing of the reports on consent to the application of settlement proceedings and the accused expresses consent to confess his or her guilt at the negotiation stage, the Prosecutor's Office should take a recess in the negotiations so that the suspect can make a confession in the form of testimony.

5. Use of a confession made in settlement proceedings only in settlement proceedings

If the law provides that someone may confess his or her guilt as testimony given in settlement proceedings, the law should also provide certain guarantees that encourage such confession. The guarantees would be necessary in cases where the suspect or the accused is willing to make a confession of guilt, which may be regarded as evidence, so as to make the application of settlement proceedings possible but the suspect or the accused has reason to believe that in the event of failure of the settlement proceedings, his or her confession would be used as evidence against him or her in criminal proceedings under the general procedure. In order to dispel such doubts on the part of the suspect or the accused, the law could provide for a restriction according to which a confession made during settlement proceedings could be used only within the settlement proceedings. This would mean that if settlement efforts fail, the confession obtained as a result of the settlement could not be used in criminal proceedings under the general procedure without the consent of the suspect or the accused. The latter is an important point because the suspect or the accused can never be quite sure that after the confession he or she and the Prosecutor's Office will reach a settlement on all points. Neither can the suspect or the accused be sure that the Prosecutor's Office will hold to the settlement reached or that the court will not refuse to complete the settlement proceedings. The possibility of the settlement proceedings failing and the proceedings continuing according to the general procedure entails the risk that, by making a confession, the suspect or the accused may limit his or her defences in the general proceedings. Placing the suspect or the accused in a position of having to make a choice entailing such a risk is not in line with the principle of fair proceedings.

It should be specified that the restriction on the use of the confession of guilt should apply only to a confession made in the framework of settlement proceedings (as a result of the settlement). Such restriction would not apply to a confession of guilt made outside the settlement proceedings.

6. Stage of criminal procedure at which settlement proceedings commence

Following from the regulation provided in the CCP, settlement proceedings may not be commenced at just any point in the entire procedure; rather, they are to begin only at the conclusion of the pre-trial procedure (CCP § 223 (4) and § 242). Settlement proceedings may also be commenced at a court hearing (CCP § 259).

According to CCP § 223 (4), the Prosecutor's Office commences settlement proceedings upon the conclusion of the pre-trial procedure after receiving the criminal file. CCP § 223 sets out the acts to be performed by the Prosecutor's Office upon receipt of criminal files, and CCP § 223 (4) provides for acts aimed at application of settlement proceedings as one of the options.

As the provisions of the CCP state that settlement proceedings may also be commenced on the initiative of the suspect or the accused, it is important to point out the stage of the procedure at which these subjects may initiate settlement proceedings. CCP § 242 (1) provides that if the suspect or the accused wishes that settle-

ment proceedings be applied, he or she shall submit a written request pursuant to CCP § 225 to the Prosecutor's Office.*¹¹

The suspect may submit the written request for the application of settlement proceedings as specified in CCP § 242 (1) in accordance with CCP § 225 (1) within five days after the date of submission of the criminal file for examination (as an exception, if the criminal matter is especially extensive or complicated, the Prosecutor's Office may extend the term to up to ten days). In other words, it arises from these provisions that the suspect can initiate the settlement proceedings after his or her counsel has received a copy of the criminal file upon conclusion of the pre-trial procedure. The criminal file is submitted for examination when the Prosecutor's Office declares the pre-trial procedure completed (CCP § 223 (3)).

As stipulated in the CCP, all the evidence required for convicting the suspect or the accused in the settlement proceedings should be collected before the commencement of the settlement proceedings. No provision has been made for the collection of supplementary evidence concerning the subject of proof (such as the testimony of the suspect or the accused — a confession of guilt) during the settlement proceedings. Thus, according to the logic of the CCP's regulations concerning settlement proceedings, the most important point for the commencement of settlement proceedings is when the Prosecutor's Office takes the position that enough evidence has been collected to convict the suspect. Naturally, one should not forget that in the pre-trial procedure, facts speaking in favour of the innocence of the suspect or accused should be identified adequately, not just the circumstances on the basis of which he or she might be judged guilty.*¹² The Prosecutor's Office also has to take into account that in the case of application of settlement proceedings, the judge should be able to form an opinion on the basis of the evidence contained in the criminal file.

If we keep in mind that regulations concerning settlement proceedings may in the future allow for the possibility of confessing guilt through testimony during the settlement proceedings, the Prosecutor's Office should accordingly be allowed to — *e.g.*, on the suspect's initiative — commence settlement proceedings when the evidence collected is not yet sufficient for conclusion of the pre-trial procedure but the suspect has voluntarily expressed willingness to confess his or her guilt in the form of testimony during settlement proceedings.

7. Conclusions

The fact that the new CCP does not require confession of guilt as a precondition for the application of settlement proceedings or as a result of the negotiations of settlement proceedings constitutes a positive development toward broadening the opportunities for application of settlement proceedings. However, it should be critically noted that current regulation of settlement proceedings does not cover the issues of confession of guilt at all.

Non-contesting of the charges, expressed as a settlement reached in settlement proceedings (admission of guilt) cannot be regarded as a substantive confession of guilt. The admission of guilt expressed in the settlement is procedural conduct as a means of affecting the course of the procedure. By signing the settlement, the accused and his or her counsel and the prosecutor mainly express their wish to continue the criminal procedure in the form of settlement proceedings under the conditions specified in the settlement.

In order to render the possibilities for applying settlement proceedings more flexible and hence the criminal procedure quicker and less resource-consuming, the law should provide for the possibility of the suspect confessing his or her guilt in the form of testimony given in the course of settlement proceedings. Such a provision would make it possible for the suspect to give testimony (more specifically, to confess his or her guilt) as part of the settlement proceedings. If the law were to provide for the possibility to confess one's guilt in settlement proceedings, the Prosecutor's Office should accordingly be allowed to — for example, on the initiative of the suspect — commence settlement proceedings before the proof is sufficient for conclusion of the pre-trial procedure but when the suspect has voluntarily expressed willingness to confess his or her guilt in settlement proceedings. It should be stressed that if the law did provide for the option of confess-

¹¹ The reference to CCP § 225 that is contained in CCP § 242 (1) could have been more specific as regards the subsections, as apparently § 225 (4) and (5) are not relevant in this case and even subsection 3 is only partly applicable to the issues of requesting settlement proceedings. The submission of the request is regulated by CCP § 225 (1) and (3). In § 1, it is provided that the participants in a proceeding may submit requests to the Prosecutor's Office within five days from the date of submission of the criminal file to the participants for examination. If a criminal matter is especially extensive or complicated, the Prosecutor's Office may extend this term to up to ten days. However, subsection 3 of the same section provides that dismissal of a request in the pre-trial procedure shall not prevent re-submission of the request in judicial proceedings. One should admit that the provisions of CCP § 225 (3), as well as the provisions of the other subsections of this section, are not adequate enough in their present form to cover requesting settlement proceedings at a court hearing.

¹² According to CCP § 211 (2), in the pre-trial procedure, an investigative body and the Prosecutor's Office shall ascertain the facts that could vindicate or condemn the suspect or the accused.

ing one's guilt in settlement proceedings, it would be just that: merely a possibility. Settlement proceedings could still be applied without a confession of guilt treatable as evidence. In any case, confession of guilt in settlement proceedings should be voluntary for the suspect or the accused.

The law should also specify the stage of the procedure at which the confession of guilt may be made in the settlement proceedings. For example, the law could provide that the confession of guilt may be made only after the Prosecutor's Office has prepared the reports on consent to the application of settlement proceedings and these reports have been signed, or after the Prosecutor's Office has commenced negotiations for the settlement proceedings. Another important point that the law should specify is that the confession of guilt must be made before the settlement is concluded.

If the law provided that a suspect could confess his or her guilt by way of testimony in the course of settlement proceedings, the law should also provide for a restriction according to which a confession made as a result of settlement could not be used in criminal proceedings following the general procedure unless there is the consent of the suspect or the accused in the event that the settlement proceedings fail.