

## Procedimientos especiales en el proceso penal oral

*Special procedures in the oral criminal proceedings*

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### Resumen

En 2008, nuestra Constitución ordenó el tránsito del sistema inquisitorio de justicia penal al acusatorio oral; los cambios estructurales en el proceso penal fueron evidentes, uno de ellos son los procedimientos especiales inexistentes anteriormente; estos procedimientos son símil del procedimiento sumario civil; de ser así, correspondería incorporar un procedimiento sumario en materia penal que aplicara a todos los casos, o, en el supuesto contrario, sería oportuno que en materia penal los procedimientos especiales fuesen diferentes y suficientes para cada caso específico según el sector de población a que

perteneciere el hipotético delincuente al desarrollar su actividad ilícita. Si el objetivo prioritario de la justicia penal oral es abreviar los procesos, los procedimientos ordinarios seguirán la regla general, no así los procedimientos especiales o sumarios, que serán más cortos y diferentes.

**Palabras clave:** sistema acusatorio, juicio oral, procedimiento especial, Constitución, justicia.

### **Abstract**

In 2008, our Constitution ordered the transit of the inquisitorial system of criminal justice to oral adversarial; structural changes in the criminal justice process were evident, one of them are special procedures previously non-existent; these procedures are simile of the civil summary procedure; If so, it would be appropriate to incorporate a summary procedure in criminal matters which apply to all cases, or, in the opposite case, it would be helpful if the special procedures were different in criminal matters and adequate to each specific case according to the sector of population to which strength belongs the hypothetical offender to develop their illicit activity. If the priority of oral criminal justice aims to shorten processes, the ordinary procedures will remain the general rule, not special or summary procedures, which will be shorter and different.

**Key words:** adversarial system, oral trail, special procedure, Constitution, justice.

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## Introduction

### **SPECIAL PROCEDURES**

The National Code of Criminal Procedures (CNPP) establishes special procedures which by their nature are soon clarification for a prompt and expeditious justice. In civil matters the summary procedure applies to specific cases that must conclude expeditiously, in order to shorten time man-hours for the sake of procedural economy. The CNPP believe becomes reality the above but comes the hypothesis: H1. Are shorter in duration and procedural economy to summary judgments in civil matters criminal special proceedings. HO. The special procedures are not shorter than the summaries civilians.

Of the materials and methods section is inferred the existence of a variety of special procedures in criminal matters, emphasizing each diversity of requirements according to the sector of population to which belongs the alleged offender; the incorporation of legal institutions such as the exercise of prosecution by private individual and the prosecution of legal persons by illegal activities of those who work on their behalf on the one hand warns, still evident that sentencing is no longer the main objective to bring him to the field of agreements established that conclude quickly already special or ordinary criminal proceedings.

The section on results, shows five of the special procedures to confirm the hypothesis of research not the special procedure for legal persons or the special procedure of criminal action by particular, confirming the null hypothesis

You can read the discussion section the purpose of the special procedures is the reduction of its duration, which in most cases is obtained with consequent procedural economy, however, it is also considered that the civil summary is a further process simple, applicable to all cases filed within the casuistry of hypotheses which provides; however, special procedures in criminal matters are more complex for its wide variety of requirements for each.

In the concluding section of each case evidence that the research hypothesis is confirmed and those who favor the null hypothesis is left.

## **MATERIALS AND METHODS**

We bibliographic works on oral trials, legislation states that apply the new system, in addition to the CNPP force in Durango, Durango.

The analytical, descriptive and explanatory methods under systematic literature technique, in order to verify research assumptions are used.

The special summary procedure does not apply automatically to mediate the request of prosecutors, who on the indictment expose test data to support it. It should also contain the narrative of facts attributed to the accused, their legal classification and degree of intervention, the budgeted amount as punishment and reparations. It is also necessary that the victim or offended agree; if you have opposition will be binding on the judge if it is founded. On the other hand, it requires that the accused give testimony to be aware of their right to a trial and show the amount of summary procedure because it must renounce the trial for the implementation of that; also admit guilt for the alleged crime and agrees to be sentenced on the basis of the means of evidence submitted by the Public Ministry (MP).

The opening of the abbreviated procedure can request the MP from the judge issuing auto linking to process control and auto opening prior to trial.

Furthermore, under the principles of contradiction and equal parts; the audience of summary procedure shall be mentioned all of them; the absence of the victim shall not prevent the control judge authorizes or not the abbreviated procedure.

If there are several co-defendants, summary proceedings is not limiting to accept any such treatment, because it can be particular as expressed by the victim.

The interest of the defendant in these proceedings has merit not only in the recognition of guilt and acceptance to repair the damage, but mainly on the benefits that will bring, as

expressed by the author Hidalgo Murillo: "... the public prosecutor may request the application a lower worth up to a third of the minimum set for the offense for which accuses "(Hidalgo Murillo, 2012, p. 140).

In connection with the special summary procedure, the author confirms Sotomayor Garza: "... is nothing but a process of negotiation in which the tax concessions granted to the accused, to change this admits his responsibility in the commission of an offense, the like an ordinary trial waiver "(Sotomayor Garza, 2012, p. 160).

The resolution will dictate the control judge at the hearing or as the author Hector Garcia Vazquez says, "... other trials called Special Procedures that are even faster (are resolved within hours and up in minutes and in a single hearing), and that justice is done expeditiously in very short time. "(Garcia Vazquez, 2008, p. 144).

### **The Special Procedures inimputables people**

The author quoted Sotomayor Garza, under this special procedure states: "... when the prosecution is aware that the person has been lawfully detained or delayed mental disorders intellectual development, this being the time shall order studies relevant expert to determine about the insanity of the accused, this will suspend the investigation "(Sotomayor Garza, 2012, p. 164).

The author Marco Antonio Diaz de Leon in his dictionary of criminal procedural law, states that "the concept of accountability is the ability of an individual to understand the criminality of the act and direct their actions. He continues, which is the set of conditions necessary for the offense can and should be attributed to who voluntarily executed, and its efficient and free cause "(Díaz de León, 2004, p. 1115).

Paragraph 15 section VII of the Federal Penal Code which concerns exclusive responsibility causes, says: "When making a typical fact, the agent has the capacity to understand the wrongfulness of that conduct or agree with that understanding by virtue of

having mental disorder or retarded mental development, unless the offender had caused her mental disorder intentionally or negligently, in which case it will respond in the typical always been and when it is scheduled or it is predictable.

When the capacity of the previous paragraph to be found only considerably reduced, is subject to the provisions of Article 69a of the Code ".1

In this hypothesis diminished capacity, numeral 69a states: "If the author's ability to understand the wrongfulness of the act and to behave in accordance with this understanding, is decreased only for the reasons outlined in section VII of Article 15 of this Code, the adjudicator, as appropriate, shall be liable to up to two thirds of the sentence would correspond to the offense committed, or the security measure Article 67 or both regards, if needed to, taking into account the degree of involvement of the criminal responsibility of the author ".2

As seen, the special procedure for inimputables people has its legal basis in the rules of Mexican law that specifically regulates the CNPP, namely:

If there are indications during the initial hearing that the accused it is in any of the cases of insanity, either party may request the court of jurisdiction practice surveys to determine the criminal responsibility or whether this is permanent or temporary and, where appropriate, if It was caused by the accused. Likewise, if the person was remanded unimpeachable, the MP should apply the aforementioned adjustments to avoid greater vulnerability in respect of their personal integrity.

Assuming that the state of insanity stop, we will continue with the regular procedure without the respective adjustments.

If the unimpeachable person has appointed guardian or legal representative, this will represent for the acts of the process, otherwise, the court of jurisdiction will assign a

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<sup>1</sup> Art. 15 fracción VII. Código Penal Federal.

<sup>2</sup> Ídem. art. 69.

provisional representative in terms of private law; without prejudice to its right to also be represented by the public defender who by law must designársele.

After verifying the existence of the illegal activity criminalized and that therein the unimpeachable intervened in the commission, as perpetrator or accomplice, operating without legal justification, the Court shall issue a resolution stating that there is sufficient evidence for imposing measure security applicable; also the court for it to determine the identification of the measure, based on the needs of positive special prevention, respecting the criteria of proportionality and minimum intervention. If these requirements are not accredited, the Court acquit the unimpeachable. The security measure may not exceed the duration of the penalty applicable if you imputable.

### **The special procedure for indigenous peoples and communities**

Special Procedures benefit population groups considered "vulnerable", the purpose is to provide a prompt and expeditious justice, to lower cost and shorter time, which also benefits the judicial body by depressurization of their workload.

Our Constitution of 1917 with an eminently social character, valued and recognized one of the sectors most vulnerable population in our country, such as indigenous peoples and communities, and although it has increased since 1994 by Subcomandante Marcos , that special treatment was not enough to them for their own personal growth, when they determine benefits as if they were minors.

More recently, in 2007 the Declaration of the United Nations adopted legislation for the treatment of offenses committed by members of indigenous peoples and communities, as a right of these, which are part of the Mexican legal framework poses the bases of our present Constitution, namely:

Article 1 of the Constitution, in its first paragraph, categorically states that all people in our country enjoy the same human rights that recognizes them as well as guarantees for their protection, whose exercise may not be restricted or suspended except in cases and under the conditions established by the Constitution.<sup>3</sup>

Members of indigenous peoples and communities in our country, consequently enjoy human rights on appointment and its guarantees for their protection.

The third paragraph of the same device 1 prohibits any discrimination on grounds of ethnic or national origin, gender, age, disability, social status, health conditions, religion, opinions, preferences, marital status or any other manner that violates human dignity and is intended to nullify or undermine the rights and freedoms of individuals.<sup>4</sup>

2nd constitutional device, specifically, bases the right of indigenous peoples and as does the secondary legislation of the states and CNPP by category of special procedure for indigenous peoples and communities.

Order the CNPP, which in the case of crimes affecting legal interests of an indigenous people or community or personal property of any of its members, and the accused and the victim, or if your family, accept the way the community, according to their own standards in the regulation of internal conflicts propose resolving the conflict, the extinction of criminal action, except in cases where the solution does not consider the gender perspective shall be declared affecting the dignity of people, the best interests of children or the right to a life free of violence against women.

Protection that sector of the population, which allows the application of practices and customs that deprive ancestrally these indigenous peoples and communities and agree affected or their families in their absence parts is evident; if so, the appropriate criminal action is extinguished; the limits established by law for minors, family violence against

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<sup>3</sup> Artículo 1º. Constitucional. First paragraph.

<sup>4</sup> Ídem. Third paragraph.



women or as affecting the dignity of people. About the author Sotomayor Garza states: "... the traditional authorities established by indigenous peoples and communities are empowered to seek and administer justice, by applying their own regulatory systems, with the only limitation that do not contradict the General Constitution of the Republic and the State" (Sotomayor Garza, 2012, pág. 169).

### **The special procedure for legal entities**

In commercial matters, collective legal persons are considered legal fiction, that is, are the product of the union of wills of individuals and it is these who represent those.

The CNPP provides that if a member or legal representative of a legal person commits an offense media has given him this, the crime is committed in the name and under the protection or benefit from it, therefore the MP exercise the criminal action against only do so well against the natural person who carried it out.

When the prosecution is aware of the commission of a crime in which a legal person is involved, it will initiate the appropriate investigation.

If the seizure of assets is required executed and that some of the individuals should go to the MP during the investigation, this will view the legal representative of the legal person to manifest what suits their rights; you can not do the legal representative of the legal person who acted unlawfully if it was because you will have the character of the accused.

During the initial hearing to make complaint to the individual, he will inform the legal representative of the legal person, assisted by counsel, the charges against his client, that either express what they deem appropriate; as both have the legal right to participate in all stages of the proceedings; well, you will be notified acts entitled to know and be able to lodge an appeal against decisions from adversely affecting the corporation. The judge or court shall issue an order by which to determine whether the legal person in question, should or should not be linked to process.

The judge or trial court, issue a decision, which is as relevant to physical and juridical person accused person, and impose this, if appropriate the corresponding sanction. Legal situations which does not provide special reference procedure instead be applied in whatever supported, the ordinary rules of procedure.

### **Special Procedure prosecution by owner**

One of the key changes in the new system of oral adversarial criminal justice, is the termination of the monopoly of the Public Prosecutor for the exercise of criminal action, attentive to the provisions of Article 21 of the Constitution which in its second paragraph states:

"The exercise of criminal action before the courts the Public Ministry. The law determines the cases in which individuals may institute criminal proceedings before the judicial authority".<sup>5</sup>

The difference in criminal procedural law of the states that have already adopted the system of oral adversarial criminal justice and aligned with the criteria Model Code of Criminal Procedure for the states, so state; of the Code of Criminal Procedure of the State of Coahuila, in Article 477 of the criminal action by private and states: "The exercise of criminal action corresponds to the prosecutor, but may be exercised by individuals who have the status of victim or offended in cases and as provided in this Code. "In turn, Article 483 of the same body of law stipulates: "The victim or injured party may exercise directly to the supervisory judge prosecution, without resorting to the prosecutor in the case of offenses which, under the Penal Code, They are pursued by a complaint of the victim".<sup>6</sup>

The CNPP orders on the assumption that the individual has decided prosecutions from that time and can not go to the law enforcement body, to solicit their support to investigate the facts denounced, is provides load Test to prove, first, the existence of the crime and, on the other hand, the responsibility of the accused, which will in procedural equality with the

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<sup>5</sup> Artículo 21 Constitucional. Párrafo segundo.

<sup>6</sup> Artículos 477 y 483 Código de Procedimientos Penales del Estado de Coahuila de Zaragoza.

accused, which will entitle you to provide all evidence in its possession and to pursue legal remedies that are coming.

The exercise of criminal action is particularly appropriate in the case of offenses prosecuted on complaint, the penalty for which is an alternative, other than the deprivation of liberty or whose criminality not exceeding three years imprisonment as the maximum limit.

If the victim or offended by the crime has data to establish that there has been a fact stipulated by law as a crime and that there is the likelihood that the accused committed it or participated in the commission, you can go directly to the judge control, exercising the criminal action particular. In this case, it will provide test data to support its action, and who do have to go to the Public Ministry.

Oronoz expresses the author: "... supported the request and giving prior compliance with the requirements shall be fixed for holding the hearing within three days, in order that the prosecution revealed what his social representation competence (Oronoz Santana, 2010, pág. 102).

The summons to the parties shall be made within 48 hours when the date for the holding of the initial hearing is set and this should be done after five but less than ten days maximum limit, which admitted the criminal action brought by particular.

### **International Legal Assistance in Criminal Matters**

Our country as part of the international concert of nations, and in accordance with signed agreements on legal assistance, is obliged to provide assistance to any foreign state or ministerial or judicial authority to require it, whether in the federal and state level, that is relevant with the investigation, prosecution and punishment of crimes falling under its jurisdiction.

The requested legal assistance on the one hand, be conducted in accordance with Mexican law and, moreover, will be promptly and expeditiously, that is, at the earliest opportunity

and authorities in Mexico involved will do so with the greatest care will unburden in order to comply with the requests.

The purpose of international legal assistance is to support between competent authorities in relation to matters of a criminal nature.

Feature important legal assistance is that only applicants will be provided for the purpose of obtaining evidence ordered by the investigating authority or the court if it is to better provide, but categorically refused if it comes to evidence offered by the defendants or their defenses, even regardless that they have been accepted and agreed upon favorably by the judicial authorities concerned.

International legal assistance in criminal matters, is governed by four principles:

1. Connectedness. Any request for assistance to be coming necessarily must be linked to an ongoing investigation or proceeding.
2. Specificity. Applications for international legal assistance must contain facts and precise requirements.
3. Identity Standards. Assistance regardless of whether the event giving rise to the request constitutes or not a crime under the laws of the State will be provided. An exception to the above, the assumption that the assistance requested for the implementation of security measures or seizure, search or house search or seizure or seizure, in which case it is necessary that the event giving rise to the procedure is also considered offense by the law of the State, and
4. Reciprocity. It involves international collaboration between sovereign states in which deprives equality.

The Attorney General of the Mexican Republic, is the competent authority in our country to respond to requests for international legal assistance based on the powers for this purpose marks the CNPP, and the same may introduce himself directly or through diplomatic channels to processing.

If there be no international convention or treaty with the requesting country of legal aid, assistance under the principle of international reciprocity, which is subordinated to the existence or offer by the State or requesting authority to cooperate in similar cases will be provided. This commitment must be in writing in the terms proposed by the Attorney General's Office.

Applications for international legal assistance in criminal matters, as in the case of urgent cases may be sent in writing to the Central Authority (Attorney General of the Republic), who analyzes if it meets the essential requirements and attached to the terms of the agreement or This international treaty, if any, as the case proceed to diligenciación accordance with the special forms and procedures indicated in the request, except that they are inconsistent with our national legislation.

### **Of informal care**

Informal care consists of all information or documentation that is likely to be obtained informally by the Central Authority, without formal request for it mediates founded in international conventions or treaties or any formality.

The usefulness of this kind of information or documentation, will only serve as evidence to the investigating authority and in no case may be executed the same, except that it is required by the format of international legal assistance, with full satisfaction requirements previously outlined in the agreements or treaties and in accordance with the provisions in the CNPP.

It is also evident that this special procedure will be much sooner and expedite the summary judgments in civil matters.

### **RESULTS**

Analyzed the special procedures, the short contains the formula for the term between the request for the application and the judgment delivered by the court of jurisdiction is in a

short time, even shorter than any summary judgment in civil matters, which we started with a letter from the applicant that must contain facts, evidence and requests occurring him to the other party three days to manifest what they deem appropriate, provide evidence and oppose exceptions and will be referred to hearing where evidence blow off steam, received the allegations and the decision is taken. Consequently, we believe that the special summary proceedings in criminal matters is different and shorter than the civil summary, since not reach the trial stage, working out at the intermediate stage by the court of jurisdiction.

Another difference in the simplified procedure not only formal but background is that in civil trials summaries usually no contention, while in the short no controversy, the basic requirement for appropriate, is that the accused accepted responsibility in the commission of illegal acts and to comply with the reparations if it was in favor of the victim.

Moreover, the special procedure incompetent and are clearly visible two assumptions: first, when the defendant is legally immune from the time he committed the offense and, secondly, whether to apply the same security measures ; in both cases there are legal benefits as if found guilty the penalty that is applied will be reduced and if you apply security measures, the benefit is not applied pretrial detention; in both situations pending on special procedure before the court of jurisdiction the term again between the beginning and the decision rendered is shortened, estimating that improves the process and benefits for the accused would not do what the civil summary.

The benefits in the procedures for indigenous peoples and communities are obvious, and there will be no crime to pursue when if they agree the parties and concerned people of the same villages or indigenous communities, so that this procedure is won in time, form and resolution compared to the same civil summary.

The main feature of the special procedure for legal persons, which was not so clearly before the CNPP is their involvement by the individual who committed the illegal activity acted on behalf of that or not however be the legal representative without however, it is essential if

we are to obtain a favorable decision against the moral person involved, jointly accusing both physical and legal persons to the decision rendered is vinculatoria for both defendants. You saved due proportion, it is considered that the application of this special procedure itself shorten it in favor of parties than the civilian summary, however if the individual does not agree with the application of this procedure will be the rules of the trial those from ordinary.

The special procedure for the exercise of criminal action by particular is beneficial because it takes away the monopoly or exclusivity of the Public Prosecutor for the exercise of criminal action, however, the process does not necessarily shorten the term of the procedure, therefore its specialty is that it is an individual who exercises according to law prosecution for certain illicit activity produced.

International legal assistance as a special procedure is comparable in some way to the exhortations and expressions that by their nature are expeditious, hence it can be noted that the summary proceedings in civil matters are longer than those.

## **DISCUSSION**

It noted that special procedures in criminal cases are an innovation introduced by the constitutional amendments in Criminal Matters of 2008, on the occasion of the new paradigm of oral criminal justice, whose aim is to reduce the length of criminal proceedings and as a result the economy procedure for the parties and for the State, alongside the ordinary trial are themselves longer and more complex processes; the special procedures in their proper perspective equate with civil summary procedure, which is the legal institution in this area that are similar and that the effect of having a shorter than ordinary trials in the same field length; however, the question of why not introduce new legislation in a simple summary proceedings in criminal matters applicable to all specific cases instead of a variety of special procedures as did the CNPP arises.

The analysis results in general terms but not in all cases special procedures reduced process time, example of this will be the special procedure for legal entities and the special procedure for the exercise of the action occurs criminal by owner whose merit is that it is an individual and not the prosecution who exercised. The remaining cases special procedures if they conclude treaties with a reduction in the duration and therefore in judicial economy compared to the civil summary judgment, which the legislator's aim is achieved.

However, it also believes that the civil summary is a simple, applicable to all cases filed within the casuistry of hypotheses which provides in exchange special procedures in criminal procedure are more complex because of the variety of requirements for each, so that although it is in the case provided by the special procedure on the alleged accused, not this procedure will be followed if either party does not agree to the granting of any of the requirements established.

As this issue of the special procedures in criminal matters is relatively new, I find no other specific studies to weigh the differences mentioned.

## **CONCLUSIONS**

It noted that the special summary procedure confirms the hypothesis to be different and further reduce its duration compared to the civil summary, since it does not travel all stages of the ordinary procedure, in resolution is issued in the intermediate stage for the Judge of Control. Another difference of this special procedure but not formal background is that the dispute between parties in the civil summary judgment does not exist in the short, the basic requirement is to be from the accused to accept responsibility in the commission of unlawful acts and to comply with the reparations if it was in favor of the victim.

The special procedure inimputables also confirms the hypothesis to shorten the term from the beginning to the decision rendered, thereby improving process and benefits for the accused would not do what the civil summary. In this special procedure two situations are



noticeable: a) that the accused is legally immune from the time he committed the crime, b) alternately apply security measures; in both cases there are legal benefits on the one hand, the penalty to be applied will be reduced and, on the other, the security measures are not remand.

The special procedure for indigenous peoples and communities benefit to the accused evidence thus confirms the hypothesis of reducing the length and procedural economy compared to the civil summary. In this procedure there will be no crime to pursue his case when the parties agree and the case of persons of the same villages or indigenous communities, so that gains in time, shape and resolution.

The special procedure for legal persons confirmed the null hypothesis, ie, justifies be a different and special procedure for the involvement of a legal person by reason of the unlawful activity by an individual who acted for or on behalf of that, regardless of To be or not the legal representative, which was not so clearly before the CNPP. So if the individual to whom the illegal activity is attributed agree, yes the research hypothesis was confirmed, failing that the normal procedure will apply.

The special procedure for the exercise of criminal action by particular is beneficial because it takes away the monopoly or exclusivity of the Public Prosecutor for the exercise of criminal action, however, the process does not necessarily shorten the term of the procedure, therefore its specialty is that it is an individual who exercises according to law prosecution for certain illicit activity produced, hence confirming the null hypothesis and research not being considered.

International legal assistance as a special procedure is comparable somehow with exhortations and expressions that by their nature are expeditious, hence it can be noted that the summary proceedings in civil matters are longer than those, so this special procedure confirms the hypothesis research.

Based on the above, according to the criteria of opportunity and the benefit that they report to the parties and the state, it is recommended that the assumptions be made, legal and evidentiary and therefore applicable to any of the special procedures, relation to the interests of the accused, the victim or victim; it is convenient to request their application in order to obtain a prompt and expeditious justice, reparations, the certainty of the shortness of the procedure with the relevant procedural economy for all parties and the state.

However, our concept is also recommended instead of the special procedures of the legislative amendment of the CNPP, to establish a criminal summary procedure for cases that the legislation scenario foreseen, so that the parties according to their interests, and other , their representatives or advocates, are the ones to determine appropriate follow up according to law, this without prejudice to the legal guidelines of both the prosecuting body as the organ of justice established by law.

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