

ECLIC Conference „EU 2020 – lessons from the past and solutions for the future”

10-11 September 2020, Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek

**CONSENSUAL JUSTICE IN CROATIAN CRIMINAL PROCEDURAL LAW:
THE NEED FOR A SYSTEMATIC APPROACH**

Elizabeta Ivičević Karas
University of Zagreb, Faculty of Law

***This work has been fully supported by the Croatian Science Foundation
under the project “Systematic approach to models of negotiated justice in
Croatian criminal procedure” (IP-2019-04-1275)***

Introduction

- a number of reforms over the last twenty years in Croatian criminal procedure law → efforts to make criminal proceedings as efficient and economical as possible → different forms of consensual procedures:
 - appropriate tools for achieving faster and more efficient criminal proceedings, provided they are adequately regulated and applied
 - humanisation of criminal justice, especially in the prosecution of less serious criminal offences

Legislative developments

Croatian legislator has gradually expanded the scope of the application of different consensual forms – without any criminal policy platform

- for less serious criminal offences:
 - judgment in the case of a guilty plea at the trial
 - the penal order and
 - “diversion”

- the Croatian model of plea-bargaining: Judgment based on the agreement of the parties (applicable to all criminal offences)

- consensual procedures for the purpose of obtaining witness statements:
 - the crown witness
 - abolishment or reduction of sentences and
 - witness immunity
 - + plea bargaining?

Key issues

The legislator has not always been consistent when addressing various aspects of particular forms of consensual procedures

- lack of clear objectives of each particular consensual form
- gravity of criminal offences?
- the role of the court, especially the power of the court to review the agreement of the parties?
- victims' rights?
- procedural and defence rights?

Conclusions

The field of application of different consensual forms has gradually expanded

But while certain instruments have been increasingly applied in practice (the penal order, judgment based on the agreement of the parties), others are hardly applied, although they may be a better designed and more appropriate instrument to achieve a specific purpose such as:

- humanising criminal proceedings in specific cases (conditional deferral or withdrawal of criminal prosecution in comparison with the penal order)
- or
- obtaining witness testimony to reveal and prove other criminal offences and perpetrators in another criminal procedure (the crown witness in comparison with judgment based on the agreement of the parties).

Conclusions

Taking a systematic approach to consensual justice in Croatian criminal procedure would involve a detailed analysis of each form of consensual procedure in respect of each of the stated elements, keeping in mind all other existing consensual procedures.

THANK YOU FOR YOUR ATTENTION!

Elizabetha Ivičević Karas
University of Zagreb, Faculty of Law

*This work has been fully supported by the Croatian Science Foundation
under the project “Systematic approach to models of negotiated justice in
Croatian criminal procedure” (IP-2019-04-1275)*