

Relieving criminal justice system in cases of less serious criminal offense

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I. Challenges for criminal justice in a time of pandemic



- Pandemic as an obstacle to the smooth conduct of criminal proceedings
- Effective fulfillment of requirements of urgency (especially in pre-trial detention cases) and immediacy in the evaluation of evidence in pandemic times?
- Possibility of conducting certain evidentiary actions remotely via audio-video devices
 - ▣ Hearing for rendering the ruling on pre-trial detention, Art. 129.
 - ▣ Interrogation of vulnerable and protected witnesses, Art. 292, 297 CPA
 - ▣ Session of the panel at second instance (upon appeal), art. 475 CPA
- Efficient exercise of defence rights?

II. Relieving criminal justice system in cases of less serious criminal offenses



- Consensual forms → mechanisms that can facilitate criminal proceedings by avoiding trial and speeding procedure in times of crisis

- CPA/2008 – expansion of different consensual forms of proceedings

- Consensual mechanisms prescribed exclusively for less serious criminal offenses (punishable by a fine or imprisonment for up to five years):
 - ▣ penal order procedure
 - ▣ conditional deferral and withdrawal of criminal prosecution
 - ▣ judgment in the case of a guilty plea at the trial

II. Relieving criminal justice system in cases of less serious criminal offenses



- **Penal order and conditional deferral of criminal prosecution – main characteristics and comparison**
 - introduced into the Croatian criminal justice system 24 years ago (CPA/1997)
 - apply to criminal offenses punishable by a fine or imprisonment for up to five years
 - the initiative for application comes from the state attorney
 - specific purpose: humanisation of proceedings by avoiding public trial
 - differences in preconditions, legal consequences and application in practice

II. Relieving criminal justice system in cases of less serious criminal offenses



- **Penal order and conditional deferral of criminal prosecution – main characteristics and comparison**
- Penal order procedure (Art. 540. – 545. CPA)
 - ▣ consensual form in accordance with principle of legality
 - ▣ expedites the proceedings and ends with a conviction of defendant (without holding a trial)
 - ▣ basis for issuing penal order: credible crime report
 - ▣ tacit consensus of defendant
- Conditional deferral of criminal prosecution (Art. 206.d CPA)
 - ▣ exception from the principle of mandatory prosecution (principle of discretionary prosecution)
 - ▣ model of diversion which presupposes the absence of a finding of guilt and formal sanctioning (goals of restorative justice)
 - ▣ explicit consent of defendant to fulfill certain obligations (informal sanctioning)

II. Relieving criminal justice system in cases of less serious criminal offenses



- Prosecutorial discretion and judicial powers
- *Penal order procedure*
 - judicial decision (judgement issuing penal order)
 - limited judicial review (single judge) of the indictment before issuing penal order
 - limited judicial review (panel) of the indictment upon defendant's complaint
 - Potential problems: admissability of evidence is not subject of judicial review
- *Conditional deferral of criminal prosecution*
 - explicit authority of the public prosecutor (quasi-judicial role)
 - one of consensual forms that do not require judicial control
 - comparative overview – requirement for certain forms of judicial control or consent

II. Relieving criminal justice system in cases of less serious criminal offenses



- Defendant's position
- *Penal order procedure*
 - ▣ defendant's waiver of the right to a trial → exclusion of oral hearing, the principle of publicity, the adversarial and contradictory production of evidence, and the immediacy of the court assessment of evidence
 - ▣ Participation of defendant? Only when simplified investigation is conducted
 - ▣ Interrogation of defendant – mandatory?
- *Conditional deferral of criminal prosecution*
 - ▣ all procedural and defence rights under the CPA apply to the same extent to the procedure of conditional deferral
 - ▣ right to a legal aid covered by the state budget funds?

II. Relieving criminal justice system in cases of less serious criminal offenses



- **Victim's role**
- *Penal order procedure*
 - ▣ role of the victim is not significant
 - ▣ victim's approval is not required for requesting or issuing penal order
 - ▣ right of the victim to be heard without an unjustified delay after the crime report with regard to a criminal offence has been made (Art 43(1) CPA)
- *Conditional deferral of criminal prosecution*
 - ▣ Strong position of victim (in comparison with some other european systems)
 - ▣ victim's consent – precondition for the implementation of conditional defferal

II. Relieving criminal justice system in cases of less serious criminal offenses



- Implementation in practice
- *Penal order procedure*
 - ▣ extensively used in practice
 - proportion of indictments with a penal order in the total number of indictments filed against adults is relatively high and constant, ranging from 37% to 40% (five years period)
- *Conditional deferral*
 - ▣ scarce application in practice
 - in average only 1 to 2% of the total number of dismissals of criminal charges have been based on decision on conditional deferral.
 - ▣ Reasons - the complexity of the proceedings?

III. Conclusion



- appropriate for solving minor crimes, contribute to avoiding and speeding up proceedings and that both institutes, given the different goals they achieve, are required in Croatian legislation
- strengthen the application of conditional deferral in practice which would contribute to the achievement of the goals of restorative justice
- clear delineation of the purpose and reasons for the application of different consensual mechanisms in practice in order to implement them effectively

Thank you for your attention

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