

NEGOTIATED JUSTICE AND VICTIMS OF CRIME: CROATIAN PERSPECTIVE

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“Systematic approach to models of negotiated justice
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INTRODUCTION

- THE PROJECT
- NEGOTIATED JUSTICE:
 - outcome of criminal proceedings is decisively determined by the agreement (explicit or implicit) between the prosecutor and the accused
- VICTIMS OF CRIME:
 - a natural person who has suffered physical and mental consequences, property damage or significant violation of fundamental rights and freedoms that are a direct consequence of the criminal offense. Spouse, extramarital partner, formal or informal life partner and descendant, and if there are none, the ancestor, brother and sister of the person whose death was directly caused by the criminal offense and the person whom he/she was statutory obliged to support shall be also be considered a victim (CPA, Art. 202(11))

INSTITUTIONS OF NEGOTIATED JUSTICE IN CROATIA

- JUDGMENT BASED ON AGREEMENT OF THE PARTIES
- COLLABORATORS OF JUSTICE
- PENAL ORDER
- CONDITIONAL DEFERRAL (AND WITHDRAWAL) OF CRIMINAL PROSECUTION
- DEFENDANT'S CONFESSION AT THE MAIN HEARING

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JUDGMENT BASED ON AGREEMENT OF THE PARTIES

- victim is not included in the negotiations between the parties on the agreement. Only once the parties reach agreement does the state attorney inform the victim or the injured party (CPA, Art. 365(5)). An exception is prescribed for criminal offences against life and limb and against sexual liberties, for which a punishment of more than five years' imprisonment is prescribed by law, and for which the state attorney must obtain the victim's consent for the negotiation (CPA, Art. 360(6))
- French, Swiss and Italian law

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COLLABORATORS OF JUSTICE

- victims are not at all involved in the negotiation process between the state attorney and a potential crown witness, or a person with potential witness immunity. However, in the procedure of granting the status of crown witness, the law gives the court the opportunity (but not the obligation) to take care of the interests of potential victims, i.e. injured parties. So the panel of the competent court may make its decision on granting the status of crown witness conditional on the possibility for the Republic of Croatia to compensate persons who have been harmed by a repentant witness for criminal offences committed as a member of a criminal organisation or association (Article 40(4) AOSCO)
- from a comparative legal perspective, victims' rights are not in the focus of the legislator's interest when it comes to consensual forms geared to obtaining witness testimony

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PENAL ORDER

- the victim's approval is irrelevant for the penal order procedure as it is not needed either for the decision on requesting the issuance of a penal order or for the penalties and other measures imposed by the penal order
- German, Italian, and French law

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CONDITIONAL DEFERRAL (AND WITHDRAWAL) OF CRIMINAL PROSECUTION

- the consent of the victim (if there is one) is necessary in order to conclude an agreement between the state attorney and the defendant
- Austrian, German, English, Italian and French law

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DEFENDANT'S CONFESSION AT THE MAIN HEARING

- the disregard for the victim's rights and interests in this sort of procedure as he/she is not allowed to reject the proposed sentence or at least formally express his/her opinion on its appropriateness

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CONCLUSION

- DEGREE OF INVOLVEMENT OF THE VICTIM IN VARIOUS INSTITUTIONS OF NEGOTIATED JUSTICE IN CROATIAN LAW SIGNIFICANTLY VARIES AND DOES NOT FIT INTO A LOGICALLY DESIGNED SYSTEM
- LEGISLATIVE AMENDMENTS ARE NECESSARY



THANK YOU!

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